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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,002	01/28/2004	Robert Breslow	66873-010001	5023

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10/13/2005

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20051011

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Newly submitted claims 21-40 are directed to an invention that is independent and distinct from the invention originally claimed. The original claims were directed to a frozen additive for use with a heated beverage or a frozen additive in the heated beverage. The newly submitted claims are directed to packages of one or more items used to prepare a frozen or unfrozen additive and a separate container of one or more items used to prepare the beverage. The frozen additive as originally claimed does not require any packaging and could be formed in a domestic kitchen, using an ordinary ice cube tray, a cup, etc. Also, the frozen additive has utility separate from the beverage since it could be thawed and used to flavor non-beverages, or it could be consumed alone. The originally presented claims were classified in class 426, subclass 590, whereas the newly submitted claims are classified in class 426, subclass 120. The inventions are therefore separate and distinct.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Therefore, the amendment filed on 7/29/05, canceling all claims drawn to the constructively elected invention and presenting only claims to a non-elected invention is non-responsive (MPEP Sec. 821.03).

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761